

THE HIGH COURT

[2024] IEHC 544

[Record No. 2023/207 JR]

BETWEEN

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APPLICANT

-AND-

THE DIRECTOR OF PUBLIC PROSECUTIONS (AT THE SUIT OF GARDA CRAIG
GEOGHEGAN)

RESPONDENT

JUDGMENT of Mr Justice Barr delivered electronically on the 16th day of September

2024.

Introduction.

1. This is a challenge to a ruling of the District Court judge made on 19 January 2023, refusing anonymisation of the criminal proceedings pending against the applicant before the District Court.

2. At the leave stage, the applicant sought various reliefs in relation to obtaining the digital audio recording (DAR) of the application in the District Court; that was not pursued at the hearing before this court, because the applicant had already obtained the transcript. Similarly, the applicant had sought various orders in relation to the provisions in the rules providing that a

judge shall not be named as a party in judicial review proceedings; however, the applicant did not proceed with that argument at the hearing of the application.

Background.

3. In setting out the background to this application, this court must be careful in what it says, as there are criminal proceedings against the applicant extant before the District Court. As the court is anxious not to prejudice that trial, it will confine itself to referring to the events giving rise to the charges against the applicant, in the briefest possible terms.

4. It is common case that the applicant's child, who was then approximately two years and 10 months old, was left unattended by the applicant in his car in the car park of Liffey Valley Shopping Centre on 25 August 2019.

5. It appears that a lady, who was in the car park, became concerned about the safety of the child in the car. She phoned the security personnel in the shopping centre. They, in turn, notified the gardaí, who arrived some short time later. The charges which the applicant is facing in the District Court prosecution, arise out of his interaction with the gardaí, when he returned to his car with a shopping trolley containing some items and containing his older son, who was approximately four years and seven months at that time.

6. Arising out of the interaction between the applicant and the gardaí in the car park, the applicant was arrested and was charged with a number of offences under the Criminal Justice (Public Order) Act 1994, as amended (hereinafter "the 1994 Act"). In particular, he is charged with the offence, that having been directed by a member of An Garda Síochána to desist from acting in a manner contrary to the provisions of s. 6 of the 1994 Act, he failed without having any lawful authority or reasonable excuse, to comply with the direction given by the Garda, and thereby committed an offence contrary to s. 8 of the 1994 Act, as amended.

7. The applicant is also charged with having failed to give his name and address following a demand therefor, as made by the Garda under s. 24(2) the 1994 Act, thereby committing an offence under sub-s 24(3) and (4) the 1994 Act, as amended. Finally, the applicant is charged with having used or engaged in threatening, abusive or insulting words or behaviour with the intent to provoke a breach of the peace, or being reckless as to whether a breach of the peace might have been occasioned, contrary to s. 6 of the 1994 Act, as amended.

8. On 19 January 2023, when the criminal prosecution was listed for mention before the District Court, an order was made on consent permitting the applicant's solicitor to come off record. The applicant then proceeded to seek an anonymisation order in relation to the prosecution pending before the District Court.

9. The District Court judge refused that application because he had heard evidence from Garda Geoghegan that there were no child witnesses in the case. The Garda had further given evidence that the children would not be named by the prosecution witnesses. On this basis, the District Court judge held that the charges did not relate to, or concern, children and therefore there was no basis for making the order sought by the applicant.

The Present Application.

10. The applicant maintains that the District Court judge erred in refusing the application on the basis that he did not take account of the fact that the applicant may wish to call one, or both of his children as witnesses in his defence at the trial. The applicant stated that he was very anxious that they would not be named in the course of the trial. On this account, he stated that he would not call either of his children in his defence, unless he had an assurance that they would not be named in any report of the proceedings.

11. The applicant submitted that once infants had an involvement in a case, it was

appropriate that an anonymisation order should be made preventing their being identified. As he is their father, this required an anonymisation of the criminal proceedings, so as to prevent jigsaw identification of the children if he were named.

12. The applicant pointed out that in his judicial review proceedings in the High Court arising out of the criminal proceedings in the District Court, orders had been made that the two judicial review proceedings should be anonymised. He submitted that it was incongruous that the derivative judicial review proceedings should be anonymised, while the substantive trial would not be anonymised.

13. The applicant stated that he was only seeking anonymisation of the trial; he was not seeking for it to be heard otherwise than in public.

14. In response to the application made by the applicant, it was submitted by Mr O'Malley SC on behalf of the DPP, that the ruling of the District Court judge had been made within jurisdiction and had not been made in breach of the rules of fair procedures; therefore, it was submitted that there was no basis on which this court should interfere with it.

15. It was submitted that the judge had been correct in ruling that the case involved charges related to the dealings which the applicant had had with the gardaí on a particular date. The charges did not concern his children. They were not going to be called as witnesses, or even referred to by the prosecution. It was submitted that in these circumstances, there was no basis on which the District Court judge ought to have made an anonymisation order.

16. It was submitted that the issue about whether or not such an order should be made, was quintessentially one which came within the jurisdiction of the trial judge. It was submitted that the trial judge could make whatever order was necessary to ensure a fair trial. Accordingly, the trial judge could order anonymisation of the proceedings, or impose reporting restrictions, as

necessary.

Conclusions.

17. It is important to note that this is an application by way of judicial review for an order quashing the order of the District Court refusing to make an anonymisation order in respect of the criminal proceedings pending against the applicant. It is not an appeal from the merits of that decision.

18. The evidence before the District Court judge was that the prosecution did not intend to call the children as witnesses, or to refer to the children at all. The prosecution concerned the applicant's interactions with the gardaí on the day in question. The charges all related to alleged breaches by the applicant of the Criminal Justice (Public Order) Act 1994, as amended.

19. The fact that the applicant may decide to call one, or both of his children in his defence at the trial, is a matter that can be addressed in the appropriate way by the trial judge. The trial judge can make whatever order he/she thinks is appropriate to secure a fair hearing and to have regard to the interests of any child who may be called by the defence as a witness. If appropriate, the judge can make an anonymisation order at that time. Alternatively, the judge can impose such reporting restrictions as may be necessary.

20. The court is satisfied that the order refusing the anonymisation order, was made by the District Court judge acting within jurisdiction. The court is further satisfied from reading the transcript of that hearing, that the District Court judge gave the applicant an opportunity to make his application and gave his reasons for refusing that application. There was no breach of fair procedures in the hearing of the application.

21. The court accepts the argument made by counsel for the DPP, that the charges pending before the District Court do not relate to the applicant's children. They relate solely to his alleged

breaches of the 1994 Act, as amended, arising out of his interaction with the gardaí on the day in question.

22. The court further accepts that the issue of anonymisation of the proceedings, or imposing reporting restrictions thereon, is one that is best addressed by the trial judge, when it is known whether the applicant intends to call either, or both, of his children as witnesses in his defence.

23. In these circumstances, the court is satisfied that no basis has been established on which this court could interfere with the ruling made by the District Court judge on 19 January 2023. Accordingly, the court refuses the reliefs sought by the applicant in these proceedings.

24. As this judgment is being delivered electronically, the parties shall have two weeks within which to furnish brief written submissions on the terms of the final order and on costs and on any other matters that may arise.

25. The matter will be listed for mention at 10.30 hours on 24 October 2024 for the purpose of making final orders.